

Before the
Administrative Hearing Commission
State of Missouri



PRIORITY DENTAL CLINIC, P.C.,)	
)	
Petitioner,)	
)	
vs.)	No. 13-0982 SP
)	
DEPARTMENT OF SOCIAL SERVICES,)	
MISSOURI MEDICAID AUDIT AND)	
COMPLIANCE UNIT,)	
)	
Respondent.)	

DECISION

The subject of this case is moot and we therefore dismiss it.

Procedure

The petitioner, Priority Dental Clinic, P.C., filed its complaint with this Commission on June 4, 2013. The respondent, the Missouri Department of Social Services, Missouri Medicaid Audit and Compliance Unit (“the Department”), filed an answer on July 5, 2013. The Department filed a motion to dismiss for mootness on September 16, 2013.

We notified Priority Dental Clinic that it should submit any response to the motion by September 27, 2013. It has filed no response.

A motion to dismiss may be granted based on allegations contained in the complaint or other evidence admissible under the law. 1 CSR 15-3.436(3).¹ The evidence on which the

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Department relies – an unauthenticated copy of a letter rescinding its previous decision – is not in a form normally considered to be admissible; it is hearsay. However, it appears to be a writing “made as a memorandum or record of an act, transaction, occurrence, or event” made in the ordinary course of business of the Department, the admissibility of which is generally required under § 536.070(10).² In addition, where no objection is made, hearsay evidence in the record can and must be considered in administrative hearings. *Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736 (Mo. App., S.D. 2004) (citing *Dorman v. State Bd. of Regis’n for the Healing Arts*, 62 S.W.3d 446 (Mo. App., W.D. 2001)). As Priority Dental Clinic filed no response or objection to the motion or the evidence, we consider the letter for the truth of the matter it asserts.

Findings of Fact

1. The Department audited Medicaid provider payments it made to Priority Dental Clinic.
2. The Department identified \$11,271.65 in overpayments. By final decision dated May 22, 2013, it notified Priority Dental Clinic of the Department’s final decision to recover that amount.
3. Priority Dental Clinic timely appealed that decision to this Commission.
4. On September 11, 2013, the Department rescinded its May 22, 2013 letter and issued a new final decision regarding an overpayment to Priority Dental Clinic.
5. In the September 11, 2013 final decision, the Department notified Priority Dental Clinic of its right to appeal the new decision and the deadline for appeal.
6. Priority Dental Clinic has not appealed the Department’s September 11, 2013 final decision.

² Statutory citations are to the RSMo Supp. 2012, unless otherwise indicated.

Conclusions of Law

We have jurisdiction of this appeal. § 208.156.5, RSMo (2000).

We may dismiss upon a respondent's motion when petitioner's complaint is moot. 1 CSR 15-3.436(1)(B) and (2). "When an event occurs that makes a [tribunal's] decision unnecessary or makes granting effectual relief by the [tribunal] impossible, the case is moot and generally should be dismissed." *Hihn v. Hihn*, 235 S.W.3d 64, 68 (Mo. App., E.D. 2007). The subject of Priority Dental Clinic's June 4, 2013 appeal – the Department's final decision dated May 22, 2013 – is moot. Therefore, dismissal is appropriate.

Summary

The Department's motion to dismiss is granted.

SO ORDERED on October 4, 2013.

/s/ Karen A. Winn

KAREN A. WINN
Commissioner